**IN THE HIGH COURT OF BOMBAY AT GOA**

**TAX APPEAL NO. 35 OF 2002.**

The Commissioner of Income
Tax, having office at
Aayakar Bhavan Patto
Plaza, Panaji, Goa. .... Appellant.

Versus

1. M/s. Indo Swiss Jewels Ltd.,
   Tivim Industrial Estate,
   Karaswada, Mapusa, Goa.

2. The Income Tax Appellate Tribunal,
   Panaji Bench, Aayakar Bhavan,
   Patto Plaza, Panaji, Goa. .... Respondents.

Shri S. R. Rivonkar, Advocate for the Appellant.

Respondents absent.

**CORAM: R. M. LODHA &**
**N. A. BRITTO, JJ.**

**DATE: 5th SEPTEMBER, 2005.**

**ORAL JUDGMENT: (R.M. LODHA, J.)**

This appeal is at the instance of the Revenue and raises the following substantial question of law :-

> " Whether the findings of the ITAT that the interest income received by the assessee is in the nature of business income and deduction under section 80HH and 80I are available to the assessee is justifiable in law ?

2. Facts in brief that have given rise to the aforesaid substantial question of law may be noticed first.

The respondent No.1 (for short, 'the assessee') is a Company engaged in the business of manufacturing of industrial jewels. For the assessment year 1990-1991, the assessee filed its return and disclosed an income of Rs.24,53,870/- after claiming deduction under Section 80HH and 80I of the Income Tax Act. The return filed by the assessee was processed and selected for scrutiny. It was found in the scrutiny that the assessee had earned interest income of Rs.7,07,711/- during the relevant year. The explanation submitted by the assessee that short term deposits were made in order to utilize funds being beneficial to the Company was not accepted by the Assessing Officer as in the opinion of the Assessing Officer, the assessee had surplus funds which were invested in various Companies and the interest was earned thereon. The Assessing Officer in the Assessment Order held that even though deposits were for a short period, they were renewed from time to time or they were withdrawn and re-invested in other companies. On 28.12.1992, the Assessing Officer passed the Assessment Order and treated the interest income of Rs.7,07,711/- in the previous year as the income from other sources. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) against the assessment order on the ground that the interest received by the assessee in the sum of Rs.7,07,711/- was in the nature of business income and that

deduction under Sections 80HH and 80I were available to the assessee. The Commissioner of Income Tax (Appeals) allowed the assessee's appeal by Order dated 26.2.1993 and treated the interest income in the sum of Rs.7,07,711/- as the business income and directed the Assessing Officer that the deductions under sections 80HH and 80I be allowed to the assessee. The Order of the Commissioner of Income Tax (Appeals) came to be challenged before the Income Tax Tribunal. By its Order dated 11.10.2001 the Income Income Tax Appellate Tribunal, dismissed the appeal giving rise to the present appeal.

3. The particulars of the income earned by way of interest for the year ending on 31.3.1990 are thus :-

| Vr Ref. & Date | Particulars | Amount |
|---|---|---|
| B222/2.6.89 | Interest on Intercorporate Deposit with M/s Hindustan Co. Ltd. | 61,667.00 |
| B273/3.7.89 | Interest @ 18.25% received on Intercorporate Deposit with M/s Gujarat Steel Ltd. | 91,250.00 |
| B516/2.9.89 | 19% interest for 3 months on 5,00,000 received from Photophone Konica Square | 23,750.00 |
| B650/17.10.89 | Interest on Deposit with Photofantacy | 10,410.00 |
| B983/10.1.90 | C.B. Development Corporation – Interest on Deposit | 46,250.00 |

| | | |
|---|---|---|
| B999/16.1.90 | Neem Timber – Interest on Deposits | 46,260.00 |
| B1032/27.1.90 | Electrosales – interest on Deposits | 1,38,750.00 |
| B1058/31.1.90 | Kamat Real Estates Interest on short Term Deposits | 33,333.00 |
| B1188/1.3.90 | Pushpa Corporation Bombay-Interest on Deposits. | 1,44,375.00 |
| B1241/20.3.90 | 18% Interest on Deposit with Pushpa Corporation. | 11,493.00 |
| B1276/30.3.90 | Interest on Short Term Deposit with M/s Kamat Real Estates | 33,333.00 |
| J49/31.3.90 | Interest on Deposit with M/s Electrosales Poona. | 66,840.00 |
| | TOTAL | Rs. 7,07,711.00 |

4. The explanation and the evidence furnished by the assessee were that the assessee were to import machinery and for which orders were already placed, the funds were kept apart from the surplus for this purpose. Since the order for machinery was placed outside India, the money had to be kept ready for meeting the demand whenever the shipments arrived. While so awaiting supplies, the funds kept apart for payment was put in intercorporate deposits so that they could earn more income. At that time the Bank deposits carried the interest of 11% per annum, whereas

the assessee received 18% interest from the companies where the intercorporate deposits were kept.

5. Though the assessing officer did not accept the explanation of the assessee, the appellate authority in the facts of the case and in the light of the material placed by the assessee on record, was satisfied that the funds were kept by the assessee in the various companies for short term for payment of imported machinery. In this connection the appellate authority held that the balance sheet for the next year also showed that all these deposits were withdrawn and paid for the machinery. The appellate authority was satisfied with the explanation put forth by the assessee. The Tribunal did not find any error in the approach of the appellate authority. That the machinery was in fact imported by the assessee is not in question. From the facts and circumstances of the present case it is clear that the intercorporate deposits were made by the assessee from the surplus funds that was set apart for the payment of imported machinery. That the said deposits were withdrawn and payment was made towards import of the machinery is also not questioned by the revenue. The interest earned on the short term deposits of the money kept apart for the purpose of business has to be treated as income earned on business and cannot be treated as income from other sources.

6. We, accordingly, answer the question in favour of the assessee and against the Revenue. The Tax Appeal is dismissed. Since the assessee has chosen not to appear, no order as to costs.

**R. M. LODHA, J.**

**N. A. BRITTO, J.**

**sl.**